

PRO PER:

1 Delray Richardson p/k/a Delray d/b/a Del Funk Boy Music  
2 and Sterling A. Snyder d/b/a Zion Records  
2191 East 21<sup>st</sup> Street Suite K  
3 Signal Hill CA 90755  
TEL: (323) 440-0855

4

5

6

7

8

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

10

DELRAY RICHARDSON P/K/A DELRAY ) Case No.: CV12-7925 ABC (Shx)  
11 d/b/a DEL FUNK BOY MUSIC, an )  
Individual, and STERLING A. SNYDER )  
12 d/b/a ZION RECORDS, an individual, ) **FRCP 26(f) REPORT**  
)

13 Plaintiffs, )  
14 V. ) Scheduling Conference: 2/4/2013  
15 CBS STUDIOS, INC., d/b/a CBS ) Trial Date: 10:00 a.m.  
TELEVISION DISTRIBUTION, a division ) Ctrm: 680  
16 Of CBS Corporation, a Delaware Corporation )  
17 Defendant )

<sup>18</sup> Pursuant to FRCP 26(f) and this Courts Order Re:

19

20

21 Plaintiffs Delray Richardson and Sterling Snyder and Defendant CBS by counsel, jointly file this  
22 report pursuant to Federal Rule of Civil Procedure 26(f) and the Court's Scheduling Order of  
23 February 4, 2013 ("February order").

24

25 The parties have conferred in accordance with Rule 26(f) and as directed by the Court, and  
26 respectfully inform the Court that they have reached the following agreements:

27

28

1       1.     Plaintiffs' Claims

2              On information and belief, the Defendant lied to Plaintiffs in its response to Plaintiff's  
3 demand letter by saying that "Love You So" was not used in episode 109 or 105 but the DVD as well  
4 as two e-mails dated Monday, July 18, 2011, 4:21 PM and Saturday, January 1, 2011 2:27 PM  
5 explains that Jean-Yves-Ducornet did not license or wasn't paid for "Love You So" or "Mr. Ex feat.  
6 Delray". In fact someone else had been credited and paid for songs they did not work on.

7              On information and belief, this lie was told as a reason to continue to hide the truth involving  
8 Plaintiffs' works as well as the Defendant doctored and falsified cue sheets. In episodes 510, 703,  
9 1003 and 1410 the track #8 of plaintiffs' complaint "Bumpin" is featured in all four of these  
10 episodes but when looking at the cue sheets there is not one title that is the same or matches this  
11 single placement in each of these episodes despite the music being exactly identical.

12             Defendant in its fraudulent and deceitful mindset willfully infringed upon Plaintiff Delray's  
13 copyrights by: (1) misrepresented the fact that someone else was / is the creator of plaintiff Delray's  
14 musical work; (2) paying the artist's administrator fraudulent synchronization fees based on this  
15 misrepresentation and others; (3) despite being put on notice of its ongoing infringements and  
16 falsified cue sheets in or around April 2012, and Plaintiffs' multiple communications with Defendant  
17 since that time, Defendant has continuously refused to comply with Plaintiffs' demands; and, (4)  
18 upon information and belief Defendant has thoroughly failed to procure any license of any kind from  
19 Plaintiffs with respect to the subject Musical Compositions and Sound Recordings in connection with  
20 the television program America's Next Top Model. Defendant has no rights to copy, use, sell,  
21 distribute, transmit, perform, broadcast, display, create derivative works of or otherwise exploit the  
22 Sound Recordings.

23             On information and belief, at all relevant time, the Defendant was aware that Steever and  
24 Kierscht were causing fraudulent and falsified cue sheets to be submitted to ASCAP among others so  
25 that the Defendant's other companies EML along with its affiliates Sony/ATV , Ziffren Brittenham  
26 Branca and Fischer, Jean-Yves -Ducornet, Where's My Cut Publishing, Pen Music Group Inc and  
27 Takeda5<sup>th</sup> Music, among others would be substantially over paid royalties. Steever and Kierscht  
28 were labeling regular background song placements as background vocal performances (BV),

1 labeling feature performances that are in fact not feature performances (F) and labeling songs as  
2 theme songs that do not appear in the episode at all(T). The overall result of these changes was  
3 substantially higher royalty payments for the Defendant and close affiliates. Delray Richardson and  
4 Del-Funk-Boy Music are actually used in the episodes in question (12 songs/instrumentals used  
5 without consent or payment as well as being a royalty generating member of ASCAP and PRS.  
6 American Society of Composers, Authors and Publisher).

7 **The Truth Hurts: Cue Sheet 1005**

8 1. Season 10 Episode 05 ends at #171 on the actual cue sheet but if you were to watch the episode  
9 while matching it with the actual cue sheet that's not where the episode ends at all. Upon our  
10 investigation we found that eight songs were fraudulently added to Season 10 Episode 05 cue sheet  
11 that are not played in the actual episode and these titles are:

- |                     |                               |                     |
|---------------------|-------------------------------|---------------------|
| 12 A. Morning Glory | 13 B. Elimination Drama Theme | 14 C. Can't Hold Me |
| D. Come Ova Here    | E. Deliberation Theme         | F. Leave It Out     |
| G. Monkey           | H. Doggy Passion              |                     |

15 2. Also upon our investigation we found that CBS employee Matthew M Kierscht who is the music  
16 supervisor for America's Next Top Model and his wife, supposedly a writer, Brenda Pauline Goggins  
17 AKA Brenda P Kierscht has songs from their extensive catalogs licensed by each of these publishing  
18 administration company's which is receiving fraudulent royalties and percentages of fraudulent  
19 royalties on the behalf of Matthew M Kierscht and Brenda Pauline Goggins AKA Brenda P Kierscht  
20 and other artist.

21 3. Among other songs that are not played in Season 10 Episode 05 is Black Market Rattle which is  
22 listed on the cue as being played eleven (11) times for 2 seconds but is not played in the actual  
23 episode not even once. Black Market Rattle is also said to be written by Brenda Pauline Goggins  
24 AKA Brenda P Kierscht and Richard Lawrence Wolf.

25 4. America's Next Top Model only has one theme song that appears at the beginning and at the end.  
26 However, Brenda Pauline Goggins AKA Brenda P. Kierscht and Richard Lawrence Wolf has two  
27 theme songs (Elimination Drama Theme and Deliberation Theme) strategically placed at the end of  
28 Season 10 Episode 05 cue sheet that are not played in the actual episode at all.

1       5. The companies that administer these songs are all strategically affiliated with CBS employees  
2       Matthew M. Kierscht, music supervisor for America's Next Top Model and Donald Steever, manager  
3       of music operations at CBS. Derek Zemrak, publishers administrator for FUHGEDDABOUDIT  
4       TUNES and TAKEDA5<sup>TH</sup> MUSIC administer songs written by Matthew M. Kierscht. Also,  
5       Sony/ATV's EXTREME PRODUCTION MUSIC USA arm of Sony/ATV Music Publishing also  
6       administer songs written by Matthew M. Kierscht. PRODLAB MUSIC who is administered by  
7       Ziffren, Brittenham, Branca and Fischer is also the administrator for Brenda Pauline Goggins AKA  
8       Brenda P. Kierscht (Matthew M. Kierscht's wife) and Wolf Richard Lawrence who is the co-writer  
9       on at least 100 songs that Brenda Pauline Goggins AKA Brenda P. Kierscht is supposed to have co-  
10      written.

11       6. Wolf Richard Lawrence songs also appear on the cue sheet for Season 10 Episode 05 but are not  
12      played in the actual episode at all. There are three songs that are repeated eighteen (18) times for 1  
13      or 2 seconds each. These titles are:

14       A. The Rakey Symbol(3 times)                   B. S Boom(6 times)           C. Cymbal Splash2Pop(9 times)

15       **Cue Sheets : PREPARED BY: DONALD STEEVER**

16   1515 BROADWAY 49<sup>TH</sup> FLOOR (RM. 18)

17   NEW YORK NEW YORK 10036-5794

18   PHONE: 212-846-3230 FAX: 212-846-1903 USA

19   8+11+18 = 37

20       How is it possible that someone who has 12 songs actually played in 19 separate episodes not  
21      get paid? On the other hand, how can cronies who have 37 songs that are not played at all in one  
22      episode get paid? This is just in one episode which is the top of the iceberg.

23       As a direct and proximate result of Defendant's deceitful misrepresentations, Plaintiffs have  
24      suffered significant and extensive damages and financial injury to be proven at trial. With all due  
25      respect, to the extent defendants complain that they are incapable of parsing the allegations against  
26      them, their complaints are makeweight and should be disregarded. Defendant acts alleged above were  
27      willful, wanton malicious, reckless and oppressive, undertaken with the intent to deceive.

28       **COPYRIGHT REGISTRATION: Jean-Yves Ducornet, Zion Pick, Sterling Snyder** In fact, the

1 copyright certificates attached as Exhibit B to the complaint are valid to the best of Plaintiffs'  
2 knowledge and the second author (Jean-Yves Ducomet) is and has always been entitled to his rights  
3 granted under these copyright registrations. (Mr. Ducomet knew about the fraud and is a willful  
4 participant in the fraud as told to Plaintiffs in an August 20<sup>th</sup> 2012 10:19 pm via text message and  
5 according to falsified cue sheets.). In 2008 the copyright law was amended to clarify such issues.  
6 Specifically, a new subsection (b) was added to section 411 and the former subsection (b) became  
7 subsection (c). It states that a certificate of registration satisfies the pre-suit registration requirement  
8 of section 411(a) unless the Defendant demonstrates **both** (a) inaccurate information was included  
9 on the application with knowledge that it was inaccurate and (b) the inaccuracy of the  
10 information, if known, would have caused the Register of Copyrights to refuse registration. This is a  
11 codification and also a significant extension of the "innocent error rule" established in case law and  
12 in the Ninth Circuit. Mr. Snyder is Zion Pick's brother and has been assigned the rights in copyright  
13 registration #SR 692-860 attached as Exhibit B to the complaint

14                   Defendant's Defenses

15                   Neither Plaintiff has standing to bring a copyright claim on the three copyright  
16 registrations which are attached to the Complaint. The first registration, dated April 16, 2004 (No.  
17 PAU2-864-138), states that the registration is for a work entitled "Delfunkboy Music Inc./Collection  
18 Hits Love You So 'Ass Like That' 'Kind of Women' "I Don't Care"". Box 2 states that plaintiff  
19 Delray Richardson ("Delray") and Jean-Yves Ducomet are both authors of the words and music. In  
20 Box 4, Delray claims to be the sole copyright claimant. However, in the box that states,  
21 "TRANSFER: If the claimant(s) named here in space 4 is (are) different from the author(s) named in  
22 space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright," there is  
23 nothing but a blank space.

24                   CBS is informed and believes that Delray never in fact obtained ownership of Mr.  
25 Ducomet's interest in the copyrights at issue in this action.

26                   Regarding the second copyright registration, dated October 3, 2011 (SR 692-860), for a work  
27 entitled "Zion," both the author and copyright claimant are identified as Zion Pick. Zion Pick is not a  
28 named plaintiff, nor is he or she identified anywhere in the Complaint. It is alleged that Plaintiff

1 Sterling A. Snyder if the “chief financial officer for recording company Zion Records which owns  
2 and controls the rights to (2) of the underlying sound recordings . . .” Complaint, Paragraph 10.

3 The third registration, dated April 3, 2012 (Sru 1-073-146) for a work entitled “Delfunkboy  
4 Music & Paperwork Productions tracks library,” again shows both Delray and Jean-Yves Ducomet as  
5 co-authors, but Delray is the sole copyright claimant.

6 These three alleged copyright registrations not only fail to confer standing on Delray or  
7 Snyder, they are a fraud on Mr. Ducomet and the Copyright Office.

8 To the extent Defendant CBS used any of the music about which Plaintiffs complain, in  
9 connection with the television program “America’s Next Top Model,” it was properly licensed from  
10 Jean-Yves Ducomet through his publishing company, PEN Music Group, Inc. As a co-owner of the  
11 copyrights at issue, Mr. Ducomet is entitled to license the compositions and sound recordings as long  
12 as he accounts to his co-authors.

13 Key Legal Issues:

14 *Plaintiffs:* (a) Standing to bring a copyright infringement action based on the fact that  
15 some of the same songs in question were licensed prior to filing this legal action; (b) Neither joint  
16 copyright owner was paid based on manipulated cue sheets, e-mail evidence, and the fact that the  
17 same songs/tracks are labeled under different titles in different episodes as well as under incorrect  
18 creators /co-creators. Defendant paying cronies for songs they knew for a fact weren’t in episodes.

19

20

21 *Defendant:* (a) Standing to bring a copyright infringement action when the copyright  
22 registration sued upon contains false information; (b) Right of a joint copyright owner to license his  
23 or her joint work.

24

25 Likelihood of Motions Seeking to Add Parties or Claims:

26 *Plaintiffs:*

27 None

28

1                   *Defendant:*

2                   None

3

4                   *Discovery and Experts:*

5                   Neither side thinks an expert is needed at this time.

6                   *Plaintiffs:*

7                   *Documents Requested from Defendant* (a) any documents or electronically stored

8                   information relating to the following cue sheet episode number and/or title below:

9                   610 - The Girl Who's Going To The Moon

10                  510- The Girl Who Talk's Behind Everybody's Back

11                  1003- Top Model Makeovers

12                  1410- Ugly-Pretty Women

13                  413- The Girl Who Walks On Water

14                  312-The Girl Who Didn't Hug Goodbye

15                  612- The Girls Go to Phuket

16                  211- The Girl Who is America's Next Top Model

17                  807-The Girl Who Gets Thrown in the Pool

18                  – including the actual cue sheets submitted to ASCAP as well as the actual episode's on DVD.

19

20                  (b) A copy of the original master licenses and synchronization

21                  licenses relating to the songs in question including checks and receipts for amounts paid for each

22                  song. ( c ) Parent company & Personnel structure of Extreme Music Library LTD /USA.

23

24

25

26                  *Defendant:*

27                  Defendant will take the depositions of Plaintiffs and serve written discovery, primarily

28                  Requests for Production of Documents. An expert does not appear necessary at this time.

#### Issues Which May be Resolved by Summary Judgment

*Plaintiffs:*

3               None or all of the issues concerning copyright infringement could possibly be wholly  
4               decided by summary judgment because of the blatant misrepresentation and manipulation of the cue  
5               sheets involving America's Next Top Model. This is what lead to the discovery of the copyright  
6               infringement. Plaintiffs would be forced into participating in the falsified cue scheme in which  
7               Defendant and its close affiliates continue to benefit from as this is read. Those individuals whose  
8               names falsely appear as the writers and creators of the plaintiffs works would never change. This  
9               would be consistent with making the plaintiffs "slaves" and allowing the Defendant and others to  
10              reap the rewards of the plaintiffs' hard work as they have been since 2003.

11

*Defendant:*

13 All issues concerning copyright infringement can be decided by summary judgment. Please  
14 note that the Court has dismissed all of Plaintiffs' claims with the exception of the three alleging  
15 copyright infringement.

16

## Alternative Dispute Resolution

18

*Plaintiffs:* Parties agree to Mediation Panel

19

**Defendant:** Parties agree to the Mediation Panel.

21

**Proposed Cut-off Dates:**

**Motions to amend pleadings by adding parties or claims: May 1, 2013**

24 Fact Discovery Cut-Off: July 29<sup>th</sup>, 2013

25 Expert Disclosure Cut-Off August 5<sup>th</sup>, 2013

26 Expert Discovery Cut-Off August 29, 2013

27

28 Motion Cut-Off August 29<sup>th</sup> 2013

1       Proposed Pre -Trial Conference Date:

2                   September 9<sup>th</sup>, 2013

3

4       Proposed Jury Trial Date:

5

                 October 1, 2013

6

                 Trial estimate 5 to 7 days

7

8                   Dated:

9

10

11

By: Delray M. Richardson

12

                 Delray Richardson

13

14

By: Sterling Snyder

15

                 Sterling Snyder

16

17

By: R S B D

18

                 Robert S. Besser

19

                 Attorneys for CBS Studios Inc.

20

21

22

23

24

25

26

27

28

1 PROOF OF SERVICE  
2 STATE OF CALIFORNIA: COUNTY OF LOS ANGELES

3 I am employed in Los Angeles County, State of California. I am over the age  
4 of 18 and not a party to the within action. My business address is 1221 Second  
5 Street, Suite 300, Santa Monica, California 90401.

6 On this date, I served the foregoing document described as FRCP 26(F)  
REPORT

7 on all interested parties in this action by:

8 [ ] placing a true and correct copy thereof enclosed in a sealed envelope with  
9 postage fully pre-paid and addressed as follows:

10 SEE ATTACHED SERVICE LIST

11 [XX] VIA MAIL: I am "readily familiar" with the firm's collection and processing  
12 of correspondence for mailing. Under that practice it is deposited with the U.S.  
Postal Service on the same day, with postage fully prepaid, at Santa Monica,  
California. I am aware that on motion of the party served, service is presumed  
13 invalid if the postal cancellation date or postage meter date is more than one  
14 day after the date of deposit stated in this affidavit.

15 [ ] VIA FEDERAL EXPRESS OVERNIGHT DELIVERY: I caused the  
above described document to be sent by Federal Express overnight delivery,  
fully prepaid, in accordance with *Code of Civil Procedure*, §1013(c).

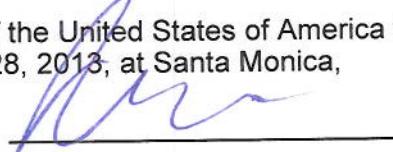
16 [ ] VIA PERSONAL SERVICE: I caused the document to be personally  
served.

17 AND/OR by:

18 [ ] VIA FACSIMILE TRANSMISSION: I sent by facsimile the above  
described document on at \_\_\_\_\_ to the facsimile number(s) identified  
above.

19 [ ] VIA E-MAIL: I caused the above described document to be  
20 electronically transferred in "pdf" format to the e-mail addressee(s) listed and  
no errors were reported.

21 I declare under penalty of perjury under the laws of the United States of America that  
22 the foregoing is true and correct. Executed on January 28, 2013, at Santa Monica,  
23 California.



24  
25  
26 Robin Sanders  
27  
28

1 SERVICE LIST  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Delray Richardson, In Pro Per  
Sterling A. Snyder, In Pro Per  
2191 East 21<sup>st</sup> Street Box K  
Signal Hill, CA 90755

(323) 440 0855